

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1188 OF 2006

IN

APPEAL NO. 565 OF 2004

IN

SUIT NO. 20 OF 1988

IN

PETITION NO. 666 OF 1979

Shri Pandurang H. Koli & ors.

] .. Appellants
(Ori.Defendants)

Versus

Shri Baburao Harishchandra Koli

] .. Respondent
(Ori.Plaintiff)

Mr. L.K. Tripathi for the applicants.

Ms. Ramya Mahesh i/b Mr. K.K. Tated for the respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. On 27th March, 2006 the Division Bench passed the following order:

"None appears for the Appellant. Appeal stands dismissed for default."

2. By this Notice of Motion, the appellant prays for recalling the order dated 27th March, 2006 and for restoration of the Appeal. In the Affidavit in support

of the Notice of Motion, it is stated that the Advocate for the appellant was held up in the Court of F.I. Rebello & A.V. Mohta, JJ. for a matter listed at Sr.No.77 and, therefore, could not appear at the time the Appeal was called out for hearing.

3. The respondent No.1 has filed his Affidavit in opposition to the Notice of Motion and it is stated that the matter has been regularly appearing for final hearing and for want of knowledge he denies that the appellants have been diligently pursuing the Board of final hearing matters.

4. Having considered the matter, we are of the view that absence of the Advocate for the appellants on 27th March, 2006 is explained by good reasons and the inconvenience caused to the respondent can be compensated by award of reasonable cost which we quantify at Rs.7,500/-.

5. Notice of Motion is granted in terms of prayer clause (a), subject to payment of cost of Rs.7,500/-. Prayer (a) reads thus:

"(a) that this Hon'ble Court by its Judgment and Order, be pleased to set aside the order dated 27th March, 2006, dismissing

the Appeal No.565 of 2004 in Testamentary Suit No.20 of 1988 in Testamentary Petition No.666 of 1979 and the above Appeal be restore to the file of this Hon'ble Court for hearing on merits;"

6. The cost shall be paid by the appellants to the respondent within two weeks from today.

. Notice of Motion stands disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]